157-277

157-277

Supreme Court, U. S.
FILED.
MAR 4 1895
JAMES H. McKENNEY,
CLERK.

BRIEF OF ARGUMENT

—OF—

PLAINTIFF IN ERROR.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 770.

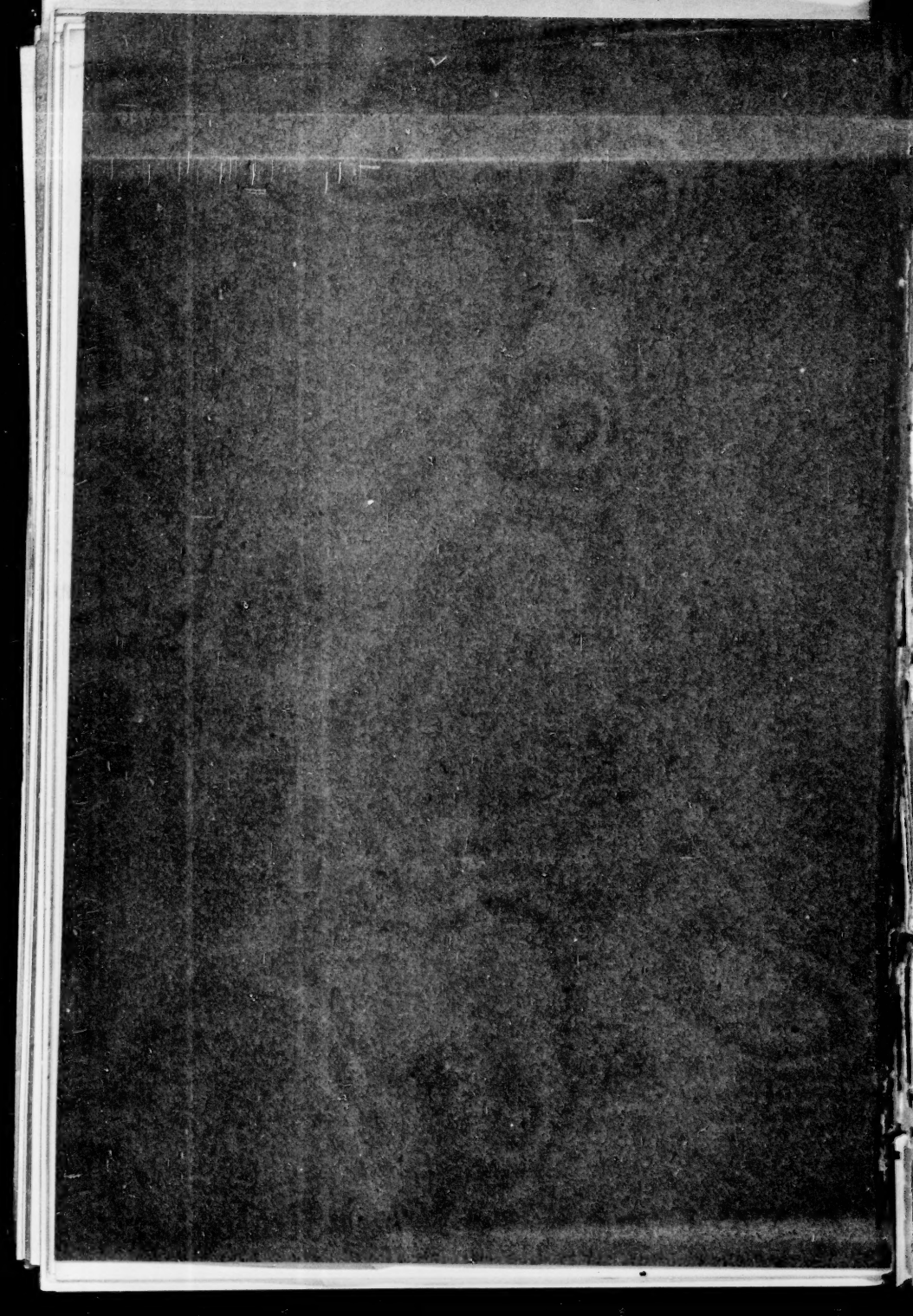
LEWIS C. STATLER, PLAINTIFF IN ERROR,

vs.

UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

THOMAS B. ALCORN,
Attorney for Plaintiff in Error.



IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 770.

LEWIS C. STATLER, PLAINTIFF IN ERROR,

vs.

UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

INDEX.

	PAGE
Statement of the Case	3
Defendant's Plea	4
Verdict	4
Motion in Arrest of Judgment	4-5
Assignments of Error	5
Brief of Argument	6-11
Appendix	12

SMITH BROTHERS, FRANKLIN PRINT, 405 GRANT STREET, PITTSBURGH.

STATEMENT OF THE CASE.

On the 8th day of May, 1894, the Grand Inquest of the United States of America, inquiring in and for the Western District of Pennsylvania, presented an indictment against Lewis C. Statler, under Sec. 5498 Revised Statutes of the United States, relating to a making, passing and having in possession with intent to defraud minor coin. [For Act of Congress see appendix.]

[The indictment is fully set fourth on page 2 of the record in this case.]

The indictment contained three counts:

FIRST COUNT.

The elements of the first count were in substance: That Lewis C. Statler, on the 12th day of February, 189–, did, with intent to defraud certain persons to the grand inquest unknown, have in his possession three counterfeit five cent nickle coins made in resemblance and similitude of minor coinage which has been coined at the mints and assay offices of the United States, well knowing the same to be counterfeited.

SECOND COUNT.

The elements of the second count were in substance: That said Lewis C. Statler, on the same day, unlawfully did attempt, with intent to defraud M. F. Griffin and others unknown, to pass, publish and sell to and upon said M. F. Griffin and others unknown, one five cent nickle counterfeited coin of the United States.

THIRD COUNT.

The elements of the third count were in substance: That said Lewis C. Statler, on the same day, unlawfully

did, with intent to defraud M. F. Griffin and others unknown, utter, pass and publish to and upon said M. F. Griffin and others unknown, one counterfeit minor coin of the United States.

DEFENDANT'S PLEA.

"And now, May 14, 1894, defendant admits having the coin in his possession set forth in the indictment and knowing they were counterfeit, but pleads not guilty of the intention of passing, or intending to pass the same, or to defraud any person with the same."

L. C. STATLER.

VERDICT.

"The jury finds the defendant guilty in the first count for having in possession counterfeit minor coin. Not guilty as to second and third counts."

Pittsburgh, May, 14, 1894.

[Signed by all Jurors.]

This verdict, in writing, was received by the Court and entered on the records as returned, and was never amended by the Court.

MOTION IN ARREST OF JUDGMENT.

And now, May 16, 1894, defendant, by his attorney, moves the Court for a stay of sentence, for arrest of judgment, and for the discharge of the defendant in the above case, for the following reasons, to wit:

1st. The jury has not found the defendant guilty of any offense under the law.

2d. The verdict, to wit: "The jury finds the defendant guilty in the first count for having in possession counterfeit minor coin. Not guilty on the second and third counts," clearly indicates that the jury did not intend to find the defendant guilty under the Act of Congress, of intending to defraud any person.

On July 2, 1894, the motion in arrest of judgment was denied by the Court, and July 14, 1894, defendant was sentenced. Hence this appeal.

ASSIGNMENTS OF ERROR.

1st. The Court erred in refusing defendant's motion of May 16, 1894, for stay of sentence, arrest of judgment, and discharge of the defendant, in view of the verdict, to wit: "The jury finds the defendant guilty in the first count for having in possession counterfeit minor coin. Not guilty as to the second and third counts."

2d. The Court erred in entering judgment upon the verdict and in not discharging the defendant.

BRIEF OF ARGUMENT.

Query: Is the verdict sufficient to sustain judgment on the first count of the indictment?

The first count is in substance: that defendant had in possession counterfeit coin, with intent to defraud.

The verdict is: "Guilty in the first count for having in possession counterfeit coin."

The verdict lacks the assential element of the offense, to wit: "Intention to defraud."

It is not an offense, under the statute, to have in possession counterfeit coin where there is no intention to defraud.

The plea admits possession and denies intention to pass or defraud, for the special purpose of calling the minds of the jury to the gist of the offense, to-wit: "the intention to defraud."

It is very evident from their written verdict, that they did not believe there was an intention to defraud; finding defendant guilty for having in possession, without more, negatives the idea of intention to defraud.

The word "for" in the verdict must be interpreted "of," otherwise the verdict is argumentative and without meaning.

Had they intended to find guilt of intention to defraud, they would have said guilty as to first count; or guilty as indicted in first count; or guilty of having in possession with intent to defraud.

If the jury did not intend to acquit of the fraudulent intent, then it is vague and uncertain as to what was their meaning—probably they had different meanings. Some may possibly have thought that having in possession was an offense for which the defendant would receive a light punishment.

The following propositions are sustained by the authorities hereinafter cited:

All the facts must be found which compose the crime.

A verdict ought to be clear, full and distinct. Nothing can be supplied by intendment.

Whatever the jury do not find implies a negative.

Finding the point in issue, by way of argument, is never permitted.

If a doubt arises from an ambiguous or unusual word in the verdict, the Court ought to lean in favor of a *venire de novo.*

Ever since the time of the unknown "Junius" such has been the law.

In *Rex vs. Woodfall,* in the court of King's Bench, decided in 1770, by Lord Mansfield; Burrow's Reports, p. 2661.

The information against the defendants was for Printing and Publishing a Seditious Libel signed Junius. It charged printing and publishing a libel in the Public Advertiser. The tenor was set forth with proper averments as to the meaning of the libel, the subject matter and the persons, with inuendos and the usual epithets.

The jury found defendant "guilty of the Printing and Publishing, only."

The defendant obtained a rule "to stay the entering up judgment on the verdict."

The Attorney General a rule "that the verdict may be entered according to the legal import of the finding of the jury."

His Lordship directed the jury to consider: "Whether all the inuendos and all the application to matter and persons made by the information were in their judgment the true meaning of the paper." If they thought otherwise they should acquit the defendant. But if they agreed with the information and believed the evidence as to the publication, they should find him guilty.

He further instructed: That "whether the paper, meaning as alleged by the information, was in law a libel, was a question of law upon the face of the record; for after conviction a defendant may move in arrest of judgment if the paper is not a libel."

"That no proof of express motive was ever required and in most cases impossible to be given."

"That where an act in itself indifferent, if done with a particular intent becomes criminal, then the intent must be proved and found. But where the act is in itself unlawful (as in this case), the proof of justification or excuse lies on the defendant, and in failure thereof the law implies a criminal intent."

In its opinion the Court says: "We are all of the opinion that the word 'only' must stand in the verdict. * * * * Therefore it is a question of law upon the face of the verdict."

The only question is, "Whether by any possibility the word 'only' can have a meaning which would affect or contradict the verdict."

"If they meant to say 'they did not find it a libel,' or 'did not find the epithets' or 'did not find any express malicious intent,' it would not affect the verdict. Because none of these things were to be proved or found either way."

"If by 'only' they meant to say that they did not find the meaning put upon the paper by the information, they should have acquitted him."

"It is impossible to say, with certainty, what the jury really did mean. Probably they had different meaning."

"If they could possibly mean that which, if expressed, would acquit the defendant, he ought not to be concluded by this verdict."

"It is possible some of them might mean not to find the whole sense and explanation put upon the paper by the innendos in the information."

"If a doubt arises from an ambiguous or unusual word in the verdict, the Court ought to lean in favor of a *venire de novo.*"

"We are all of the opinion, upon the whole of the case, that there should be a *venire de novo.*"

A verdict ought to be found clearly, fully and distinctly; it can't be supplied by inference; neither can it be amended by any notes of the associate, in a criminal case:

1 Salk, 53. *Rex vs. Bold.*
1 Salk, 47. *Rex vs. Keate.*

The finding the point in issue, by way of argument, in a general verdict, is never permitted; not though the argument be necessary and conclusive:

Rowe vs. Huntington. Vaugban, 75.
Shelley vs. Alsop, in Yelverton, 77.

There can be no constructive offenses, and before a man can be punished his case must be plainly and unmistakably within the statute:

United States vs. Lascher, 134; U. S., 624; decided April Term, 1890.

In an information under the 9th, Sec of Internal Rev. Act of July 13, 1866, which enacts that any person who shall issue any instrument &c., for the payment of money without the same being duly stamped, with the intent to evade the provisions of this act, shall forfeit pay, &c.; *the intent is the essence of the offense, and no judgment can be entered on a special verdict, which does not find such intent.* The special verdict stated the drafts were issued without being stamped, but it did not state that this was done with intent to evade the provisions of the act.

United States vs Buzzo, 18 Wallace P. 125 opinion of Bradley, J., in 1893.

The leading characteristics of a good verdict, whether general or special, is that it must embody a finding upon all the issues made by the pleadings. This must be done in language not to be misunderstood, and a verdict which finds only a part of the issue is defective:

Moore vs. Moore, 67. Texas, 293.

A verdict which finds the accused guilty of an act for which he cannot be punished under the indictment; or which omits from its findings any essential legal element necessary to constitute the offense charged, will not sustain sentence:

State vs. White. 41 Iowa, 316.

In case of an indictment for stealing a watch: "We find the prisoner not guilty of stealing the watch, but guilty of keeping it in hope of reward from the time he first had the watch."

Held by Courts of Criminal Appeal that this finding amounted to a verdict of "Not guilty."

R. vs. York. 1 Den. C. C. R., 335.

A druggist was indicted for selling intoxicating liquors to be used as a beverage. The verdict was: "We find the defendant guilty of selling liquor without license." Held

that this was no offense, and that the defendant should be discharged. If the jury wished to find the facts specially, it was their duty to find all the facts which compose the crime charged:

Rodes vs. Commonwealth. Supreme Court of Pennsylvania; 6 Atlantic Reporter, 245.

Upon an indictment for writing and publishing a libel on the character of A. & B., the jury found defendants guilty of writing and publishing bill of a scandal against A. & B. Judgment reversed because defendant was not found guilty of the offense charged in the indictment:

Sharff vs. Commonwealth: 2 Binney, 514.

In case of an indictment for maliciously cutting with intent to wound, a verdict of guilty of cutting with intent to wound is not sufficient to sustain judgment:

Riplemaker vs. State. 25 Ohio St., p. 395.

A special verdict must state all the facts essential to a recovery, and nothing can be supplied by intendment.

Thompson on Trials, Vol. 2 sec. 2651, and cases there cited.

To the same effect, *Abbot's Trial Brief* 524, and cases there collected.

In stating a special verdict, the facts must be summed up fully and exactly as on special plea, and the omission of any fact necessary to constitute an offense is fatal, since the Court cannot supply from its own knowledge any material fact which the jury should find.

If the facts found are equivocal and are consistent with innocence, then the Court cannot determine as a question of law, the guilt or innocence of the defendant.

Whartons Criminal Pleading and Practice, (9th Ed.) p. 746.

THOS. B. ALCORN,
Attorney for Plaintiff in Error.

APPENDIX.

Section 5458. Every person who falsely makes, forges, or counterfeits, or causes, or procures to be falsely made, forged, or counterfeited, or willingly aids, or assists in falsely making, forging, or counterfeiting any coin in the resemblance of similitude of any of the minor coinage which has been, or hereafter may be, coined at the mints of the United States; or who passes, utters, publishes, or sells, or brings into the United States from any foreign place, or has in his possession, any such false, forged, or counterfeit coin, with intent to defraud any person whatsoever, shall be punished by a fine of not more than one thousand dollars and by imprisonment at hard labor not more than three years.

157-277

157-277

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

LEWIS C. STATLER, PLAINTIFF IN error,
v.
THE UNITED STATES.
} No. 770.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

LEWIS C. STATLER, PLAINTIFF IN error,
v.
THE UNITED STATES. } No. 770.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR THE UNITED STATES.

The sole question presented for the consideration of this court is whether or not the verdict rendered by the jury below was sufficient to found judgment upon.

Plaintiff in error was tried upon an indictment found under Rev. Stat., sec. 5458, which contained three counts, charging (1) having in possession counterfeit coin with the intent to defraud; (2) attempting to pass the same; and (3) passing the same.

Upon the first count the case went to trial only on the issue as to "intent to defraud," the *possession and knowledge of the character of the coin being admitted* by special plea endorsed upon the indictment (Rec., p. 3); and the jury returned the following verdict (p. 4):

> The jury finds the defendant guilty in the first count for having in possession counterfeit minor coin.
> Not guilty as to second and third counts.

From the docket entries (p. 1) it would appear that no objection was made to the reception of the verdict; but, on the following day, the defendant moved in arrest of judgment and for discharge of the defendant (p. 5) upon two grounds: (1) That the jury did not find the defendant guilty of any offense; and (2) that the verdict "clearly indicates that the jury did not intend to find the defendant guilty under the act of Congress of intending to defraud any person." The motion was overruled.

The errors assigned are the overruling of the motion in arrest, and the entering of judgment and refusal to discharge defendant (p. 11).

The *opinion of the trial judge* (pp. 6–8) very convincingly sustains the contention of the Government that the verdict was not uncertain, and that the portion of the finding which states "for having in possession counterfeit minor coin" was simply a brief designation of the offense charged in the first count.

The indictment was endorsed as follows:

> Indictment *for having in possession counterfeit minor coin*; 2d, attempting to pass the same; 3d, passing the same.

The plea was not simply "Not guilty," but there was an explicit admission of the "having in possession counterfeit minor coin." The jury, therefore, in rendering their verdict in the form they did, presumably intended to identify the first count, *which was not referred to* BY NUMBER *in the endorsement on the indictment*, by the brief statement so endorsed upon the indictment. As properly said by the trial judge, it cannot be assumed that they intended to omit passing upon the only issue left to them to determine—namely, the intent to defraud.

The case is covered by the principles laid down in 1 *Bishop on Criminal Procedure*, page 623, where the author says:

> SEC. 1005*a*. *Form and interpretation of verdict.*—The words being "the finding of lay people," need not be framed under the strict rules of pleading, or after any technical form. Any words which convey the idea to the common understanding will be adequate. And all fair intendments will be made to support it. To say, therefore, that the defendant is "guilty," or guilty of an offense named which is less than the whole alleged, is sufficient, without adding "as charged in the indictment;" *for the latter will be supplied by construction.* So, likewise, a general finding of "guilty" will be interpreted as guilty of all that the indictment well alleges. * * * Surplusage in a verdict may be rejected, being harmless, the same as in a pleading. And the verdict must be construed as a whole, not in separate parts.

Late authorities holding that a verdict must be construed in connection with the indictment are *Burgess* v. *State* (Texas Crim. App.), 24 S. W. Rep., 286, and *Rogers*

v. *Commonwealth* (Va.), 19 S. E. Rep., 162. In the last cited case the court quoted from 3 Rob. Pr. (Old Ed., 262) as follows:

> A verdict of a jury in a criminal case must always be read in connection with the indictment, and if it be certain, upon reading them together, what is the meaning of the verdict, it is sufficiently certain. The indictment is never copied or repeated in the verdict, *nor need the charge be set out in the latter with anything like the same particularity with which it is set out in the former. The verdict refers to and adopts the indictment in whole or in part, either expressly or by necessary implication.*

"All criminal proceedings must be looked at in the light of common sense" (*Armstrong* v. *People*, 37 Ill., 459, 463).

In *State* v. *Vocum* (117 Mo., 622, 626) it was objected to a verdict finding the accused guilty of "assault to commit rape," that as the offense charged was "assault *with intent* to commit rape," the verdict was insufficient. The reviewing court, however, held otherwise.

So, in *Arnold* v. *State* (51 Ga., 144), the defendant was indicted for an assault with intent to murder B by shooting at him, "*wilfully and feloniously*, with a loaded pistol," and the jury returned the following verdict:

> We, the jury, find the defendant guilty of shooting, not in his own defense, and recommend him to the mercy of the court.

The reviewing court held that the verdict was not void for uncertainty, and that the judgment might, by reference to the indictment, be entered upon it for shooting at B, not in his own defense, *and without justification*.

In *Commonwealth* v. *Judd* (2 Mass., 329), the jury had returned a verdict that the defendants were "guilty of a conspiracy to make base and spurious indigo, with a fraudulent intent to sell the same as genuine indigo." The indictment was for conspiring "to mix, compound, and manufacture a certain base material in the form and color, and of the resemblance, of good and genuine indigo." It was claimed that the verdict was for a different offense from that named in the indictment; and also that the indictment charged an intent to sell *at auction*, while the verdict found an intent to sell *generally*. But the Supreme Court overruled the objections, holding that the verdict should be amended and saying, through Parsons, C. J. (p. 334):

> As the jury can not inquire into the truth of any facts but those which are comprised in the issue, it must necessarily be intended that whatever facts they find *are according to the allegations of the indictment*, unless a different intention can be inferred from the verdict.

Tested by the rule just stated, the intention of the jury in the verdict rendered in the case at bar, when construed in connection with the indictment, is manifest. The acts charged in the first count could only constitute one offense; an omitted element would not have made a crime of lesser degree. The jury could only have meant by the language employed, "GUILTY IN THE FIRST COUNT," to find the defendant guilty of the *commission of crime*. *Necessarily*, Statler must have held possession of the counterfeit coin, with good or evil intent, and in the face